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**SUPREME COURT OF THE STATE OF WASHINGTON**

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Consolidated cases of:

*In re Dependency of E.H.*

and

*In re Welfare of S.K.-P.*

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**SUPPLEMENTAL BRIEF OF DEPARTMENT OF SOCIAL AND  
HEALTH SERVICES REGARDING THE SEALING OF  
DEPENDENCY RECORDS**

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## I. INTRODUCTION

The Department of Social and Health Services agrees with S.K.-P.'s motion to seal dependency court records, filed December 15, 2017.<sup>1</sup> This Court has acknowledged that three-fourths of the requested relief has already been granted by a Commissioner of the Court of Appeals, and remains in effect at this Court: (1) the parties are required to use initials of the children and parents in motions and briefs; (2) the Court will maintain sealed the appendices and exhibits accompanying S.K.-P.'s Motion for Discretionary Review; and (3) the Court will maintain sealed any appendices or exhibits filed in the future by S.K.-P. and/or Respondents before this Court. *See* Letter from Erin L. Lennon, Supreme Court Deputy Clerk, Washington State Supreme Court, to Parties (No. 94798-8) (Dec. 20, 2017). The remaining relief sought, to seal trial court records contained in S.K.-P.'s appellate file, including identified transcripts of trial proceedings

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<sup>1</sup> This brief was written as a response to the motion to seal filed by S.K.-P. because the undersigned counsel misunderstood the letter from the clerk's office asking for supplemental briefing. *See* Letter, Erin L. Lennon to Parties (Jan. 18, 2018). The clerk's office subsequently rejected the brief because it was captioned a response to S.K.-P.'s motion to seal and was thus untimely. *See* Letter, Erin L. Lennon to Parties (Feb. 8, 2018). This second letter allowed the Department to re-file the document if re-titled a supplemental brief. *Id.* In accordance with that permission, the Department resubmits the identical brief (except for this footnote), but has re-titled it a supplemental brief. To the extent that the Court wished to hear the Department's view on sealing dependency records in general, the analysis expressed in the brief would apply in any dependency case, but the result might differ in an unusual case with different facts.

and clerk's papers, should be granted. The legislature has declared the information confidential at the trial court level, the records in this case contain sensitive and highly personal information, and this Court has previously ruled that article I, section 10 of the Washington Constitution does not apply to similar records.

## **II. ARGUMENT**

### **A. The Court Should Seal the Records in Recognition of the Legislative Determination that such Records Are Confidential**

GR 15(c)(2)(A) and (F) permit the Court to seal files and records when permitted by statute or under compelling circumstances. In cases involving juvenile dependency, RCW 13.50.100(2) requires that records "shall be confidential and shall be released only pursuant to this section and RCW13.50.010." RCW 13.50.010, in turn, provides for access to juvenile court records and files in limited circumstances, but requires that anonymity and confidentiality must be preserved. *See* RCW 13.50.010(7)-(8). Consistent with the policy expressed in these statutes, sealing the records at issue is an appropriate step in this case to assure the anonymity of the child who is the subject of this appellate litigation, and that of her family members. *Cf.* GR 15(g) (records sealed at trial court remain sealed on appeal).

This Court recently upheld sealing juvenile records in the context of a juvenile offender's record. *State v. S.J.C.*, 183 Wn.2d 408, 352 P.3d 749 (2015). In applying the experience and logic test to determine whether article I, section 10 of our state constitution applied, the Court determined that "[t]he legislature has always treated juvenile court records as distinctive and as deserving of more confidentiality than other types of records" and that the Court "has always given effect to statutory provisions providing enhanced confidentiality for juvenile court records[.]" *S.J.C.*, 183 Wn.2d at 417, 422. The Court explained that "the legislature is in the unique and best position to publicly weigh the competing policy interests raised in the juvenile court setting, particularly as it pertains to the openness of juvenile court records." *Id.* at 422. Consistent with its past decisions, the Court held that article I, section 10 does not apply to juvenile court records. *Id.* (citing, inter alia, *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 36, 640 P.2d 716 (1982)).

The Court's reasoning in applying the experience and logic test in *S.J.C.* is even more compelling in this case. Dependency and termination of parental rights cases are unlike other areas of the law. The children and infants involved in these cases have done nothing to bring themselves within the court system, yet risk significant embarrassment if their identities are publicized. As in *S.J.C.*, the legislature's statutory determination that

the children should be given confidentiality should be afforded respect.  
RCW 13.50.100(2).

**B. Application of the Ishikawa Factors Shows That the Records Should Be Sealed**

Because article I, section 10 is inapplicable to the juvenile records, the Court is not required to apply the *Ishikawa* factors before sealing the record. *S.J.C.*, 183 Wn.2d at 411. But this Court has held that the *Ishikawa* factors, even when not constitutionally required, can be helpful in evaluating whether to seal juvenile records in an appellate file. *In re Dependency of J.B.S.*, 122 Wn.2d 131, 138, 856 P.2d 694 (1993). Those factors confirm that the dependency records identified in S.K.-P.'s motion should be sealed.

Under the *Ishikawa* test, documents in the court file may be sealed if: (1) the proponent of sealing shows a need for sealing; (2) opponents of sealing are given an opportunity to object; (3) sealing is the least restrictive means available to protect the interests at stake and will be effective; (4) the Court weighs the competing interests, considers alternative methods, and makes findings; and (5) the order is no broader in application or duration than necessary. *Ishikawa*, 97 Wn.2d at 37-39.

With respect to the first factor the juvenile records at issue here contain sensitive information about S.K.P. and her family members that

would be detrimental to the children involved and the dependency process in general if made public. Those records include allegations of abuse and neglect, including sexual abuse (CP 2, 32); summary of medical and psychological conditions (CP 26-27); description of personal conversations between the children and social workers or the GAL (e.g., CP 28, 83); discussion of mental health treatment (CP 83); and similar, highly personal records.

The motion filed by S.K.-P. and the opportunity for any interested person to file a response objecting to the sealing satisfies the second factor. As to the third factor, sealing the documents will be effective in protecting confidential information, and is the least restrictive means available other than redaction. But redaction is time-consuming and is not always effective.

As to the fourth factor, the balance of interests weighs heavily in favor of sealing the records. By statute, these records are deemed confidential at the trial court, reflecting the legislative acknowledgement of the sensitivity of this information. Unlike the facts in *J.B.S.*, where this Court held dependency records should be disclosed, this case does involve sensitive information, and neither the parents nor the GAL have waived confidentiality. *See J.B.S.*, 122 Wn.2d at 139. There is no public interest reason for revealing the identities of the particular children and families involved in these cases, but there is considerable interest in maintaining



confidentiality. *See* RCW 13.50.100(2). The parties' briefing and opinion of this Court, using initials rather than names, provide the information necessary for the public to be informed of the basis of the parties' arguments and the Court's decision. Finally, the Court's weighing of these considerations and the limits on the scope of the order will satisfy the fourth and fifth *Ishikawa* factors.

### **III. CONCLUSION**

Pursuant to GR 15(c)(2)(A) and (F), the Department requests that the Court grant the outstanding relief sought in S.K.-P.'s motion to seal.

RESPECTFULLY SUBMITTED this 9th of February 2018.

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DATED this 9th day of February 2018, at Olympia, Washington.

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**Comments:**

Supplemental Brief Of Department Of Social and Health Services Regarding The Sealing Of Dependency Records  
Cover Letter

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